

§ 458.64

remedies available under the constitution and bylaws of the labor organization and of any parent body, or (2) invoked such available remedies without obtaining a final decision within 3 calendar months of such invocation.

(b) The complaint shall contain a clear and concise statement of the facts constituting the alleged violation(s), the remedies which have been invoked under the constitution and bylaws of the labor organization and when such remedies were invoked.

(c) The complainant shall submit with his complaint a copy of any ruling or decision he has received in connection with the subject matter of his complaint.

§ 458.64 Investigations; dismissal of complaint.

(a) If it is determined after preliminary inquiry that a complaint is deficient in any of the following respects, the District Director shall conduct no investigation:

(1) The complainant is not a member of the labor organization which conducted the election being challenged;

(2) The labor organization is not subject to the CSRA or FSA;

(3) The election was not a regular periodic election of officers;

(4) The allegations, if true, do not constitute a violation or violations of § 458.29;

(5) The complainant has not complied with the requirements of § 458.63(a).

(b) If investigation discloses (1) that there has been no violation or (2) that a violation has occurred but could not have affected the outcome or (3) that a violation has occurred but has been remedied, the Chief, DOE shall issue a determination dismissing the complaint and stating the reasons for his action.

(c) A determination dismissing the complaint may be reviewed by the Assistant Secretary, but only on the basis of deciding whether the Chief, DOE's decision was arbitrary and capricious. The request for review must be made within fifteen (15) days after service of notice of dismissal.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

29 CFR Ch. IV (7-1-09 Edition)

§ 458.65 Procedures following actionable complaint.

(a) If the Chief, DOE concludes that there is probable cause to believe that a violation has occurred which may have affected the outcome and which has not been remedied, he shall proceed in accordance with §§ 458.66 through 458.92.

(b) The challenged election shall be presumed valid pending a final decision thereon by the Assistant Secretary, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(c) When the Chief, DOE supervises an election pursuant to an order of the Assistant Secretary issued under § 458.70 or § 458.91, he shall certify to the Assistant Secretary the names of the persons elected. The Assistant Secretary shall thereupon issue an order declaring such persons to be the officers of the labor organization.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 62 FR 6094, Feb. 10, 1997]

OTHER ENFORCEMENT PROCEDURES

§ 458.66 Procedures for institution of enforcement proceedings.

(a) Whenever it appears to the Chief, DOE that a violation of any provision of §§ 458.26 through 458.30 has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference with the Chief, DOE or his representative concerning such alleged violation.

(b) Whenever it appears to a District Director that a violation of this part (other than §§ 458.2, 458.26-458.30, or 458.37) has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference with the District Director or his representative concerning such alleged violation.